

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.606(b),)
Table of Allotments)
Television Broadcast Station)
(Waverly, New York and Altoona, Pennsylvania))

MM Docket No. 96-11
RM-8742

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To: Chief, Allocations Branch

PETITION FOR RECONSIDERATION

Renard Communications Corp. ("Renard"), petitioner for a new television allocation on Channel 39 at Geneseo, New York (RM-8744), by its counsel, herewith submits its petition for reconsideration of the Commission's Report and Order (DA 96-1592), released September 27, 1996, in the above-captioned proceeding. In support whereof, the following is stated:

1. Renard seeks reconsideration in the instant case due to the potential conflict between this allocation and the allocation of Channel 39 at Geneseo, NY as proposed in RM-8744. The potential conflict is produced by the Commission's "proposed" DTV allotment table (*Sixth Further Notice of Proposed Rule Making*, FCC 96-317, released August 14, 1996). The comment date for the DTV allotment table set forth therein is November 22, 1996. Reply Comments are due December 23, 1996. It is noted that at the time the DTV order was released, the Geneseo rulemaking was already ripe for action (no oppositions or counterproposals having been filed).

2. In the draft DTV table, the Commission has proposed that Channel 39 be used as a

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DTV allotment for an existing Rochester station, thereby precluding its use at Geneseo.¹ By allocating Channel 57 to Waverly at this time, the Commission further restricts other options which might be available for DTV allotments in Rochester. This could preclude the proposed use of Channel 39 in Geneseo. As a result, the Waverly allocation is potentially in conflict with the Geneseo proposal due to the possible need to use one of these channels as a Rochester DTV allocation. Clearly, any action at this time which fails to consider the ultimate outcome of the DTV table is premature and prejudicial to other proposals which could be impacted.

3. In this regard, it is noted that the Commission is no longer accepting new NTSC allotment proposals and has stated that it will process existing ones on a case-by-case basis only. The Commission has recognized the need to “freeze” the processing of additional proposals until it has formulated a workable DTV table. Similarly, it is improper for the Commission to act on any pending allotments which could have an impact on the DTV table until it has considered comments on the “proposed” DTV table. In issuing the instant allotment, the Commission has acted based solely on its “proposed” DTV table, despite the fact that the comment period on the DTV table has not yet closed. The Commission’s action here in issuing an allotment based on a lack of conflict with the “proposed” DTV table is arbitrary and capricious because it improperly prejudices the outcome of the DTV proceeding *vis a vis* other DTV allotment proposals and essentially gives an unfair advantage to the FCC’s DTV allotment proposal. This in turn is prejudicial to Renard because its proposal is in conflict with the FCC’s DTV allotment proposal but not with MST’s proposal.

4. Such a result is particularly egregious in light of the fact that most parties have already

¹ In regard to the DTV table, other organizations, such as Maximum Service Telecasters (MST), are generating alternative tables. The MST table would not use Channel 39 in Rochester, leaving it available for Geneseo.

concluded that the FCC's "proposed" table was not prepared using all of the proper criteria for determining what channels would be best for existing broadcasters as well as the development of new TV services in the future. For example, the MST proposal seems to have satisfactorily accommodated all existing stations while allowing for pending upgrades as well as pending allotment petitions. In the instant case, both the Waverly and Geneseo proceedings were ripe to be granted at the time of release of the instant order. The selection of the Waverly petition for grant, without consideration of the Geneseo proposal at the same time, is arbitrary and capricious in that the ultimate outcome of the DTV proceeding could render one of the proposals unacceptable. Clearly, the decision to grant Waverly and defer Geneseo is arbitrary since it assumes the outcome of the DTV table when comments have not yet been filed much less analyzed.

WHEREFORE, THE PREMISES CONSIDERED, it is respectfully requested that the Commission grant the instant petition for reconsideration and hold its action in this rulemaking proceeding in abeyance, pending action on the DTV table of allotments and the Commission's proposed action in the Geneseo rulemaking proceeding.

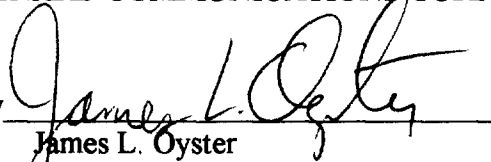
Respectfully submitted,

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October 28, 1996

RENARD COMMUNICATIONS CORP.

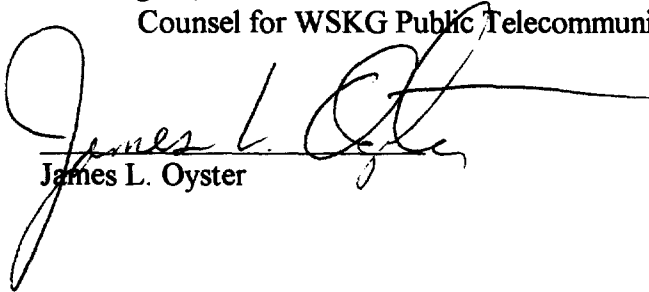
By


James L. Oyster
Counsel

CERTIFICATE OF SERVICE

James L. Oyster hereby certifies that he has sent copies of the foregoing Petition for Reconsideration by first class U.S. mail, postage prepaid, on or before the 28th day of October, 1996, to the following:

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